



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

January 4, 1982

Ms. Mary Ann Fast
Deputy Yavapai County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I82 - 002 (R81-165)

Dear Ms. Fast:

We have reviewed your opinion dated November 4, 1981, to the Superintendent of Mingus Union High School concerning the procedures a peace officer must follow in taking a student on a school campus into temporary custody pursuant to A.R.S. § 8-223. The following is a revision of your opinion.

The Legislature recently amended A.R.S. § 8-223. See Ch. 293, 1981 Ariz. Sess. Laws (1st Reg. Session). The amendment added a notification procedure for taking a child into temporary custody. According to A.R.S. § 8-223.C, if a peace officer takes a child into temporary custody where there are reasonable grounds to believe that the child has committed a delinquent act, or is incorrigible, or there are reasonable grounds to believe that the child has run away from his parents, guardian or other custodian, the peace officer must provide written notice¹ within 6 hours to the parent, guardian, or custodian of the child. The statute further

1. A.R.S. § 8-223.D provides:

The written notice shall contain the name of the person and agency taking the child into custody and the location from which the child was taken and all the following information:

a. the date and time of the taking into custody;

(Continued on next page.)

provides that if the parent, guardian, or custodian is present when the child is taken into custody, written notice is to be provided immediately. A.R.S. § 8-223.C.1.

A question arises whether a school in which a student is taken into temporary custody by a peace officer under circumstances requiring written notice is entitled to immediate notice as a custodian of the student. Custodian as used in A.R.S. § 8-223.C is defined as:

a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the Juvenile Court.

1. (Continued from previous page.)

b. the name and phone number of the agency responsible for the child;

c. a statement of the reasons for temporary custody of the child;

d. a statement that the child must be returned within forty-eight hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed and a statement that a child is in temporary custody for examination pursuant to subsection B, par. 2, subdivision (b) of this section must be returned within twelve hours unless abuse is diagnosed;

e. a statement that if a dependency petition is filed and child is declared a temporary ward of the court: (i) the parent, guardian, or custodian of the child may file a written request with the juvenile court for a hearing to review the temporary custody pursuant to § 8-546.06; (ii) the hearing on the dependency petition shall be set not later than twenty-one days from the filing of the petition; (iii) the parent, guardian, or custodian of the child may request appointment of counsel pursuant to § 8-225 through the juvenile court.

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A.R.S. § 8-201.6. A school teacher, principal, superintendent, and board of trustees have been characterized by courts as standing in loco parentis to students under their charge, but only to a limited extent. See, e.g., People v. Jackson, 65 Misc.2d 909, 319 N.Y.S.2d 731, 734 (1971); Wilson v. Abilene Independent School District, 190 S.W.2d 406, 410 (1945). Their relationship with students, however, qualitatively differs in scope from that of parents or legally appointed guardians.^{2/}

The notice requirement of A.R.S. § 8-223 is largely, if not entirely, irrelevant to school authorities with respect to their limited custodial status, which does not encompass a concern for regaining custody of a child with the attendant responsibilities. The written notice requirement is relevant to those with the ultimate and primary responsibility for and care of a child. The Arizona Court of Appeals has observed such a difference in a similar factual and legal situation that called for notice of child custody proceedings to the child's parent, guardian, and custodian:

The term "custodian" as used in this statute [A.R.S. § 25-331.E] means a legal custodian, i.e., when appointed a custodian by a competent court in a proper action or proceeding whose authority is tantamount to that of a parent or a testamentary guardian--it does not mean someone who is engaged by the parent to provide for the daily care of the child.

2. The term in loco parentis means in the place of a parent and a "person in loco parentis" is one who has assumed the status and obligations of a parent without formal adoption. See Gribble v. Gribble, 583 P.2d 64, 66 (Utah 1978). Courts in determining whether a person stands in loco parentis to a child will look at factors such as whether the person provides for the support and maintenance of the child, whether the person disciplines the child, lives with the child, and considers the child as his or hers. See Lehigh Foundations, Inc. v. Workmen's Compensation Appeal Board, 39 Pa. 416, 395 A.2d 576, 578 n.3 (1978). School authorities do not provide for the support and maintenance of their students, discipline the students as a parent or guardian could, or live with the students or consider them their own children.

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Uppen v. Superior Court, 116 Ariz. 81, 567 P.2d 1210, 1212 (Ct.App. 1977). We therefore conclude that one who merely has limited temporary custody of a child is not a custodian for notification purposes.

While notification of school authorities that a peace officer planning to take a student into temporary custody may help to minimize possible school disruption, no such advance notice is required by A.R.S. § 8-223 even if the school authorities were entitled to receive the written notice statutorily required to be given parents, guardians, or custodians after this officer takes the child into custody. While a person who interferes with the peaceful conduct of an educational institution such as a high school could be guilty of a misdemeanor offense under the State's criminal code, a peace officer who disrupts a school by taking a student into temporary custody pursuant to A.R.S. § 8-223 would not be criminally culpable under A.R.S. § 13-2911. A.R.S. § 13-402.A expressly provides that conduct that would otherwise constitute an offense is justifiable when it is required or authorized by law.

In conclusion, we think A.R.S. § 8-223, as amended, does not require a peace officer to inform any school authority with regard to taking a student into temporary custody on school grounds.

Sincerely,



BOB CORBIN
Attorney General

BC/CWL/lm



CHARLES R. HASTINGS
COUNTY ATTORNEY

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Nov 4 1981

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November 4, 1981

11-9-81 pc
LOWE/JACOBS
R81- 165

Henry A. Barbarick, Superintendent
Mingus Union High School
P. O. Box 248
Cottonwood, Arizona 86326

EDUCATION OPINION
ISSUE NO LATER THAN

1-7-82

Dear Mr. Barbarick:

I received your request for information on whether it is normal procedure for a police officer to come on campus to "pick up" students without informing any school authority.

In answering your question, I am assuming that at all times the officer is acting in his capacity as a peace officer and the student is a juvenile.

A.R.S. §8-223 delineates when a child may be taken into temporary custody:

1. Pursuant to an order of the juvenile court under the provisions of this chapter.
2. Pursuant to the laws of arrest, without a warrant, when there are reasonable grounds to believe that he has committed a delinquent act other than as prescribed by subsection C or is incorrigible.
3. By a law enforcement officer or a child protective services specialist of the state department of economic security if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary.

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4. By a law enforcement officer if there are reasonable grounds to believe that the child has run away from his parents, guardian or other custodian.

A peace officer shall take a child into temporary custody pursuant to the laws of arrest, with or without a warrant, when there are reasonable grounds to believe that:

1. The child has committed a delinquent act which if committed by an adult could be a felony or breach of the peace, and

2. The child has been apprehended in commission of the act or in fresh pursuit.

Such child may be released from temporary custody only to the parents, guardian or custodian of such child or to the juvenile court.

The case law has stated that an officer may arrest without a warrant only where there is probable cause to believe a delinquent act has been committed or the juvenile is incorrigible. Therefore, the "reasonable grounds" requirement of the statute, A.R.S. §8-223(A)(2) is to be equated with the probable cause standard applied in criminal matters. In Re Pima County Anonymous Juvenile Action No. J24818-2, 110 Ariz. 98, 515 P.2d 600 (1973).

If a situation arises which falls within the purview of A.R.S. §8-223, the officer then has the authority to take the child into custody. However, as you are well aware, the school authorities have the obligation of the students' welfare and the duty to enforce rules governing the school and its activities. See A.R.S. §§15-302 and 341. If the child is taken into custody without the knowledge of school officials, the officials could not adequately perform their duties. If a law enforcement officer does remove a juvenile pursuant to A.R.S. §8-223, it should be done with the full knowledge of the proper school authorities.

The criminal code makes it a misdemeanor offense to interfere with the peaceful conduct of educational institutions. See A.R.S. §13-2911. This statute also requires the governing board to adopt rules and regulations to maintain public order on school property. These rules and regulations should be available to your local law enforcement agencies as they may be called upon to enforce them [see A.R.S. §13-2911(F)] and to avoid future problems. I suggest that you post applicable rules so that all members of the public are made aware of any rules which apply to them.

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

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The arrest of a student could be a highly disruptive occurrence calling for the cooperation of both law enforcement and school authorities. The welfare of the students should be a primary concern. Clearly, a requirement that you or your designated officials be kept informed of such matters is not too onerous and is one that is mandated if you are to adequately perform your duties.

I hope this has been of some assistance. Please contact me if you have further questions.

A copy of this opinion is being sent to the Attorney General's office for their review.

Very truly yours,

Mary Anne Fast

Mary Anne Fast
Deputy County Attorney

MAF:crt

cc: Attorney General
159 State Capitol Building
Phoenix, Arizona 85007